

1 MICHAEL W. MALTER, #96533
JULIE H. ROME-BANKS, #142364
2 DAVID B. RAO, #103147
Binder & Malter, LLP
3 2775 Park Avenue
Santa Clara, CA 95050
4 Telephone: (408)295-1700
Facsimile: (408) 295-1531
5 Email: michael@bindermalter.com
Email: julie@bindermalter.com
6 Email: david@bindermalter.com

7 Attorneys for Secured Creditor
Thomas P. Tuttle and Catherine M. Tuttle,
8 Trustees of The Tuttle 2000 Living Trust
dated 11/22/00
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10 **UNITED STATES BANKRUPTCY COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5**

12
13 In re:

14 VICTOR BATINOVICH,

15
16 Debtor.

Case No. 17-52444-SLJ

Chapter 11

Date: January 10, 2018

Time: 10:30 a.m.

Courtroom: 3099

17 **DECLARATION OF JULIE H. ROME-BANKS IN SUPPORT OF LIMITED**
18 **OPPOSITION TO MOTION TO DISMISS CHAPTER 11 CASE**

19 I, Julie H. Rome-Banks, hereby declare:

20 1. I am an attorney licensed to practice by the State of California and
21 admitted to practice before the above-entitled Court. I am a partner with Binder & Malter
22 LLP, attorney for Secured Creditor Thomas P. Tuttle and Catherine M. Tuttle, Trustees
23 of The Tuttle 2000 Living Trust dated 11/22/00 ("Tuttle") in the within action and I make
24 this Declaration on behalf of my client.

25 2. I have personal knowledge of the matters contained herein, except as to
26 those matters alleged upon information and belief and as to those matters If called
27 upon as a witness, I would testify to the following.
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1 3. By way of background, this is the second bankruptcy case that the Debtor
2 has filed. The first bankruptcy case was filed by the Debtor under chapter 13 as Case
3 #17-52027, which was filed on August 23, 2017 and dismissed on September 21, 2017
4 due to the Debtor's failure to file required schedules, statement of financial affairs and
5 other required pleadings after having received an order at the Debtor's request
6 extending the deadline for filing such documents from the Court (in Case #17-52027,
7 see docket #8, Order on Request For Extension to File Documents and docket #14,
8 Order and Notice of Dismissal for Failure to Comply, copies of which are attached
9 hereto as Exhibits "A" and "B" respectively and incorporated herein by reference).
10 Accordingly, this second individual bankruptcy case is presumed to be filed in bad faith
11 and the Debtor bears the burden of proof to rebut such presumption by clear and
12 convincing evidence if the Court was to extend the automatic stay beyond the 30 day
13 period provided by statute.

14 4. This second bankruptcy case was filed under chapter 11 on October 5,
15 2017. The Debtor attempted in this second bankruptcy case to extend the automatic
16 stay beyond the 30 day period provided in 11 U.S.C. §362(a)(3) by filing a motion which
17 Tuttle opposed. However, the Debtor did not timely file his motion to extend the
18 automatic stay, did not set that motion to extend the automatic stay for a hearing and as
19 a result the automatic stay terminated as a matter of law on November 4, 2017. The
20 Debtor then sought a temporary restraining order or to reimpose the automatic stay
21 against Tuttle by filing an Adversary Proceeding (Adversary Proceeding No. 17-5088)
22 on November 6, 2017, however relief therein was summarily denied by the Court by
23 written order entered on November 7, 2017. True and correct copies of Tuttle's
24 opposition to the Debtor's motion to extend the automatic stay and the Court's order
25 denying relief in the Debtor's adversary proceeding are attached hereto as Exhibits "C"
26 and "D" respectively and are incorporated herein by reference.

27 5. Finally free of the automatic stay in this second bankruptcy case, the
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1 foreclosing trustee was scheduled to conduct a trustee's foreclosure sale on November
2 9, 2017 on behalf of Tuttle. However, on November 8, 2017, the wife of the Debtor, Ann
3 Batinovich, filed a chapter 13 petition in this Court which is currently pending as case
4 #17-52709-SLJ. Said petition was filed on behalf of Ann Batinovich as a skeleton filing
5 without schedules or a statement of financial affairs and without a proposed chapter 13
6 plan. None of these required pleadings has been filed by Ann Batinovich as of the date
7 of the filing of this Limited Opposition. In addition, no notice of the Ann Batinovich
8 bankruptcy case was provided prior to the trustee's foreclosure sale. The voluntary
9 petition by Ann Batinovich failed to include Tuttle as a creditor for purposes of receiving
10 notice, nor did it include Tuttle's bankruptcy counsel of record who had previously
11 appeared in the two bankruptcy cases involving the Debtor herein. Tuttle only became
12 aware of the Ann Batinovich bankruptcy case out of an abundance of caution on my
13 part because I anticipated a possible bankruptcy filing by Ann Batinovich following the
14 events described above regarding the termination of the automatic stay in this the
15 Second Victor Batinovich Case. Therefore I was routinely checking the PACER
16 electronic docket before Tuttle conducted his scheduled trustee's foreclosure sale
17 scheduled for November 9, 2017 at 10:00 a.m. At approximately 8:40 a.m. on
18 November 9, 2017, I discovered the Ann Batinovich bankruptcy case had been filed by
19 searching for her name on PACER and as a result, instructed the foreclosing trustee to
20 continue a foreclosure sale which would have otherwise occurred due to lack of notice
21 of the bankruptcy case to Tuttle or to the foreclosing trustee under Tuttle's junior deed
22 of trust described below. Notably, every time Tuttle must continue the foreclosure sale
23 due to a bankruptcy case being filed, Tuttle incurs additional foreclosure fees.

24 6. The Debtor herein argues in support of dismissal that the purpose for
25 going forward with a Chapter 11 Plan and Disclosure Statement was to "mainly
26 reorganize his debt and retain his residence." Debtor contends that since he is no
27 longer protected by the automatic stay, Chapter 11 is of no assistance to him and
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1 therefore he wants to dismiss this chapter 11 case. The Debtor's declaration offering
2 the only evidence in support of his dismissal motion is remarkably short in this regard.

3 Executed on December 13, 2017 at Santa Clara, California. I declare under
4 penalty of perjury that the foregoing is true and correct.

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6 /s/ Julie H. Rome-Banks
7 Julie H. Rome-Banks
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